

STATE OF MICHIGAN
COURT OF APPEALS

CLARA R. ADAMS and ZERBO'S HEALTH
FOODS, INC.,

UNPUBLISHED
January 16, 2014

Plaintiffs-Appellants,

v

FAUSONE BOHN, LLP, FAUSONE TAYLOR &
BOHN, LLP, JAMES G. FAUSONE, THOMAS
F. CAMPBELL, TROY R. TAYLOR, and PAUL
F. BOHN,

No. 311040
Wayne Circuit Court
LC No. 10-007142-NM

Defendants-Appellees,

and

JAMES R. SHAW and ERIC ADAMS,

Defendants.

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendants. Even though the trial court erred in determining that all of plaintiffs' claims were barred by the statute of limitations, because defendants were nonetheless entitled to summary disposition on plaintiffs' claims on other grounds, we affirm.

Plaintiffs filed suit against the Fausone defendants ("defendants"), a law firm and several of its attorneys, alleging liability under three legal theories: legal malpractice, fraud, and conversion of money. The trial court found that plaintiffs' claims for fraud and conversion of money, were, in substance, claims for legal malpractice. Because plaintiffs' claims were not brought within the two-year limitations period applicable to legal malpractice claims, MCL 600.5805(6), the trial court granted the defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). The trial court specifically determined that because defendants' representation of plaintiffs ceased in 2005, her complaint filed in 2010 was not timely.

On appeal, plaintiffs argue that the trial court erred by finding that they had not stated claims for fraud and conversion independent from their legal malpractice claim. We agree that the trial court erroneously concluded that plaintiffs' claims of fraud and conversion sounded in legal malpractice. However, because defendants were entitled to summary disposition on those claims on other grounds, plaintiffs are not entitled to any relief on appeal.

I. STATUTE OF LIMITATIONS – MCR 2.116(C)(7)

The trial court granted defendants' motion under MCR 2.116(C)(7) on the basis that the claims were barred by the statute of limitations. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In evaluating a summary disposition motion brought under MCR 2.116(C)(7), a reviewing court considers "all documentary evidence and accept[s] the complaint as factually accurate unless affidavits or other documents presented specifically contradict it." *Shay v Aldrich*, 487 Mich 648, 656; 790 NW2d 629 (2010).

MCR 2.116(C)(7) provides for summary disposition of a legal action brought outside the applicable limitations period. In determining which limitations period controls, this Court will first determine the true nature of the claim by reading the complaint as a whole and looking beyond mere procedural labels. *Adams v Adams*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007). "The type of interest allegedly harmed is the focal point in determining which limitation period controls." *Simmons v Apex Drug Stores*, 201 Mich App 250, 253; 506 NW2d 562 (1993).

The trial court based its ruling on the fact that the undisputed evidence established that the attorney-client relationship between plaintiffs and defendants ended no later than November 2005 and that the two-year limitations period under MCL 600.5805(6) therefore ended in November 2007. Thus, the trial court ruled that plaintiffs' filing of their complaint in 2010 was not timely. We agree that the evidence was undisputed that the any attorney-client relationship between plaintiffs and defendants ended in 2005. But the alleged acts that defendants took that form the basis for plaintiffs' claims of fraud and conversion happened in 2010. Because of this reason, we conclude that plaintiffs' claims of fraud and conversion were not merely claims of legal malpractice masked by procedural labels. In short, the trial court failed to fully consider *when* the alleged acts took place in relation to the existence of any attorney-client relationship when it determined the true nature of plaintiffs' claims.

Plaintiffs initially retained defendants in conjunction with an attempt to procure property in 2005. Related to an agreement drafted by defendants and entered into by plaintiff Clara Adams and Eric Adams, Clara provided \$260,000 to Eric, which was then held in defendants' trust account. But in October 2005, Clara and Eric sent a letter to defendants, stating that the agreement was "null and void" and that the funds should be returned to Clara. Defendants thereafter returned the appropriate funds. Thus, any attorney-client relationship that may have existed between plaintiffs and defendants ceased at that time as well. *Mitchell v Dougherty*, 249 Mich App 668, 683 n 6; 644 NW2d 391 (2002). Any subsequent oral agreement that Clara entered into with Eric "reviving" the nullified written agreement, but with several modifications, did not obligate defendants in any way since they were not a party to the agreement. Additionally, the terms of that initial agreement were fulfilled once the agreement was nullified by Clara and Eric and the remainder of the funds was returned to Clara. As a result, reviving that

already-fulfilled agreement had no effect on defendants. We therefore conclude that because any attorney-client relationship between plaintiffs and defendants ended in 2005, plaintiffs' claims of fraud and conversion for actions that took place in 2010 are not properly construed as claims of legal malpractice.

However, we hold that the trial court's error was harmless since defendants nonetheless were entitled to summary disposition on different grounds. Although the trial court only decided defendants' motion for summary disposition under MCR 2.116(C)(7), defendants also moved for summary disposition under MCR 2.116(C) (8) and (10). Thus, because summary disposition is an issue of law and we have all the facts necessary to review the issue, to promote judicial efficiency, we will review the two claims under these other subrules. See *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 521; 773 NW2d 758 (2009).

II. SUMMARY DISPOSITION UNDER ALTERNATE GROUNDS

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The motion should be granted if the plaintiff has not stated a claim upon which relief can be granted and no factual development could possibly justify recovery. *Id.* at 129-130.

With respect to plaintiffs' claim of fraud, it is clear that plaintiffs have failed to state a claim upon which relief can be granted. In order to state a valid fraud claim, a plaintiff must allege the following elements:

(1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. [*Titan Ins Co v Hyten*, 491 Mich 547, 555; 817 NW2d 562 (2012).]

In the present case, plaintiffs do not allege that the purported false statements were made with the intention that *they* should act upon them in any manner. More importantly, plaintiffs do not allege how they actually relied on any such statements. The only action where plaintiffs arguably suffered any injury was when they provided funds to Eric. But plaintiffs do not explain how they relied on any statements made by defendants in providing the funds or undertaking any other action. Therefore, plaintiffs have failed to state a claim upon which relief can be granted, and defendants were entitled to summary disposition pursuant to MCR 2.116(C)(8).

Turning our attention to plaintiffs' claim of conversion, we similarly conclude that defendants were entitled to summary disposition under MCR 2.116(C)(8). To support an action for conversion of money, defendants must have had an obligation to return the specific money entrusted to their care. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999). In this case, there are no valid grounds to support a conclusion that defendants were obligated to return to plaintiffs the funds at issue. Plaintiffs' complaint relies *solely* on the initial loan funds of \$260,000 that was given to defendants to hold in trust. However, plaintiffs acknowledge in an attachment to their complaint that the initial agreement

was deemed “null and void.” Therefore, since plaintiffs’ claim of conversion relies on defendants’ obligation found in a voided contract, the claim is fatally deficient.

We also note that when reviewing this claim under MCR 2.116(C)(10) (no genuine issue of any material fact) the undisputed evidence reveals that not only was this agreement voided, but *the funds related to that agreement were returned to plaintiffs*. The actual funds at issue allegedly were the result of the subsequent revival of that agreement, which involved approximately \$217,000 this second time. However, taking this as true, as we have noted earlier, any subsequent oral agreement between plaintiff Clara and Eric did not obligate defendants to perform in any manner since they were not a party to that revival. Thus, there is no evidence to establish that defendants wrongfully handled the funds, and defendants were entitled to judgment as a matter of law. See *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001) (stating that motion for summary disposition is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law).

Therefore, while the trial court erred in determining that plaintiffs’ claims were time barred because they all sounded in legal malpractice, we will not disturb the trial court’s ruling because we conclude that defendants were entitled to summary disposition on other grounds. See *Miller-Davis Co v Ahrens Const, Inc (On Remand)*, 296 Mich App 56, 70; 817 NW2d 609 (2012) (“When a trial court reaches the right result for the wrong reason, the ruling will not be disturbed.”).

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ William B. Murphy

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood